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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,299	06/22/2001	Siegfried Luft	4906.P016	6835
8791	7590	12/27/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN			HSU, ALPUS	
12400 WILSHIRE BOULEVARD			ART UNIT	
SEVENTH FLOOR			PAPER NUMBER	
LOS ANGELES, CA 90025-1030			2665	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/887,299	<b>Applicant(s)</b> LUFT ET AL.	
	<b>Examiner</b> Alpus H. Hsu	<b>Art Unit</b> 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31-37 is/are allowed.
- 6) ☒ Claim(s) 5,6,8-11,13-26,29,30,38-40,43-54,56-59,61 and 62 is/are rejected.
- 7) ☒ Claim(s) 7,12,27,28,41,42,55 and 60 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/8/02, 3/18/02, 6/26/02, 7/30/02</u>                                     | 6) <input type="checkbox"/> Other: _____                                    |
| <u>10/9/02, 1/22/03, 7/14/05</u>   |   |

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1. Applicant's election without traverse of Group II, claims 5-62 in the reply filed on October 13, 2005 is acknowledged.

2. Claims 5, 6, 8-11, 13-26, 29, 30, 38-40, 43-49, 51-54, 56-59, 61 and 62 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 31, 8, 24 and 1 of copending Application No. 09/999,503. Although the conflicting claims are not identical, they are not patentably distinct from each other because regarding claims 5, 6, 8-11, 13-26, 29 and 30, by interpreting the load balancing of layer 2/3 traffic as the claimed transmission of set of layer 2/3 traffic in the pipe and without the further limitation of M:N linear connection for the channels in the pipe, claim 31 of the copending Application No. 09/999,503 claims the same invention as claims 5, 6, 8-11, 13-26, 29 and 30 of the instant application. Regarding claims 38-40, 43 and 44, without the further limitation of layer 2/3 processing circuit, claim 8 of the copending Application No. 09/999,503 claims the same invention as claims 38-40, 43 and 44 of the instant application. Regarding claims 45-49, 51 and 52, by interpreting the four specific processing circuits as the claimed four processing circuits, claim 24 of the copending Application No. 09/999,503 claims the same invention as claims 45-49, 51 and 52 of the instant application. Regarding claims 53, 54, 56-59, 61 and 62, by interpreting the load balancing of layer 2/3 traffic as the claimed transmission of set of layer 2/3 traffic in the pipe and without the further limitation of M:N linear connection for the channels in the pipe, claim 1 of the copending Application No. 09/999,503 claims the same invention as claims 53, 54, 56-59, 61 and 62 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 5, 6, 8-11, 13-26, 29, 30, 53, 54, 56-59, 61 and 62 are rejected under 35

U.S.C. 102(e) as being anticipated by Raj et al. (US Patent No. 6,628,649 cited by the applicant).

Regarding claims 5, 6, 8-11, 13-26, 29, 30, 53, 54, 56-59, 61 and 62, Raj discloses a machine-readable that provides instructions and a computer implemented method comprising: allocating a pipe (230, Figure 7) from part of a working channel (230-1) and at least part of a protecting channel (230-2) of a span of a bi-directional line switched ring (BLSR) (see col. 32, lines 60-63 and Figure 18), the pipe having a bandwidth; transmitting a set of layer 2/3 traffic in

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the pipe (see col. 32, lines 65-67); and reducing the pipe's bandwidth when a failure occurs in the ring (see col. 31, lines 16-23); wherein said set of layer 2/3 traffic is transmitted in the working channel part of the pipe while there is a failure and a second set of Layer 2/3 traffic is transmitted in the remaining protection channel part of the pipe while there is a failure (see col. 33, lines 44-

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 38-40, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raj et al. (US Patent No. 6,628,649 cited by the applicant) in view of Duvvuru et al. (US Patent No. 6,765,916 cited by the applicant).

Regarding claims 38-40, 43 and 44, Raj discloses a network element comprising: a control card to allocate a pipe from a working channel and at least part of a protection channel to detect failures on the optical ring, and to reduce the pipe's bandwidth when a failure occurs and to restore the pipe's bandwidth while there is not a failure on the optical ring. Raj differs from the claimed invention in that it does not teach an optical processing circuitry coupled with the control card, the optical processing circuitry to transmit and receive a set of optically switched traffic having a set of layer 2/3 traffic.

However, Duvvuru teaches a network element comprising: an optical processing circuitry (302, fig. 3) coupled with the control card to transmit and receive a set of optically switched traffic having a set of layer 2/3 traffic (col. 5, lines 21-30).

Therefore, it would have been obvious to use a network element of Duvvuru in

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the network of Raj in order to provide data transmission to/from different networks.

8. Claims 31-37 are allowed.

9. Claims 7, 12, 27, 28, 41, 42, 49, 50, 55 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 45-52 would be allowable if rewritten or amended to overcome the double patenting rejection(s) or a terminal disclaimer timely filed as set forth in this Office action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

De Boer '837 '859 & '334 and Shields et al. are cited to show the common feature of providing dynamic protection bandwidth allocation in bidirectional line switched rings (BLSR) network similar to the claimed invention.

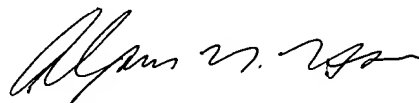
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AHH



Alpus H. Hsu  
Primary Examiner  
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